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December 22, 2014

Advocates Sue EPA for Not  
Regulating Stormwater From  
Urban, Suburban Areas

From [Daily Environment Report™](#)

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By [Amena Saiyid](#)

Dec. 19 — Environmental groups have asked the U.S. Court of Appeals for the Ninth Circuit to order the Environmental Protection Agency to comply with an 11-year-old ruling by the court to toughen regulations for urban and suburban stormwater runoff and to determine whether regulation of stormwater runoff from forest roads is necessary.

In a [lawsuit](#) filed late Dec. 18, the Natural Resources Defense Council and the Environmental Defense Center allege the EPA ignored a 2003 Ninth Circuit ruling that required the agency to strengthen its 1999 regulations to govern stormwater runoff from cities and suburbs with a population of less than 100,000.

They claim the same ruling also required the EPA to determine the necessity of regulating other sources of stormwater, such as forest roads (*Envtl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 57 ERC 1039 (9th Cir. 2003)).

The groups said the EPA's failure to address the court's 2003 remand order was "especially troubling" because Congress required the EPA to complete these rules by 1993, as required by the 1987 amendments to the Clean Water Act that codified regulation of stormwater discharges.

"Yet, more than eleven years after this Court found the rule unlawful and remanded it to the agency, EPA has yet to comply with the Court's remand order," the groups said, adding that meanwhile, the state permitting agencies have continued to rely on the invalidated regulations for small municipal separate stormwater sewer systems (MS4).

#### **Courts Have Authority to Issue Orders**

They noted that federal courts have authority to issue writs of mandamus directing agencies to comply with prior orders, "and this Court should now exercise that authority."

"We want the court to require the EPA to propose a rule for urban runoff within six months of the court ruling and a final rule six months after the proposed rulemaking," Larry Levine, NRDC senior attorney, told Bloomberg BNA Dec. 18.

At issue are the 1999 regulations governing Phase II stormwater discharges from MS4s operated by cities and suburbs with populations of less than 100,000.

These regulations allowed MS4s to fulfill their general

National Pollutant Discharge Elimination System permit obligations by merely filing notices of intent to discharge stormwater runoff without any subsequent reviews by either the EPA or the state permitting authority to enforce compliance.

Stormwater runoff is one of the most significant sources of water pollution in the nation, transporting suspended metals, sediments, algae-promoting nutrients (nitrogen and phosphorus), floatable trash, used motor oil, raw sewage, pesticides and other toxic contaminants into streams, rivers, lakes and estuaries, EPA has said.

#### **Agency Sidesteps Question**

The agency sidestepped the question of ignoring the 2003 ruling in its response to Bloomberg BNA Dec. 19.

"The EPA continues to believe that stormwater discharges pose a serious threat to the nation's water bodies and that it needs to take concrete steps to strengthen the stormwater program," the agency said in a statement.

Specifically, the agency said it plans to strengthen MS4 permits as they come up for renewal using existing requirements. The agency said it is promoting green infrastructure to manage stormwater and encouraging the use of integrated planning to manage wastewater and stormwater and offering technical assistance to communities to build robust programs.

#### **Court Objected to Phase II Rules**

The groups said in the petition that the Ninth Circuit objected to the EPA's Phase II regulations for MS4s, terming them an "impermissible self-regulatory system" because it allowed permittees to decide, without any oversight from the regulatory authority, which pollution

control measures to include in their permits.

The Ninth Circuit said the general NPDES permit for MS4s violated the Clean Water Act because stormwater permits require controls to reduce runoff to the maximum extent practicable.

Levine said the court didn't direct the agency to begin regulating forest roads under NPDES permits. Rather, the Ninth Circuit remanded the issue to the EPA to determine whether forest roads need to be regulated under Sec. 402(p)(6).

That section of the law required the EPA to establish stormwater regulations based on studies it conducted on identifying discharge sources, determining maximum extent practicable controls and establishing procedures and methods for controlling that runoff.

#### **Court Gave EPA Decisionmaking Authority**

The appellate court left it up to the EPA to either accept the arguments by the environmental groups to regulate forest roads in whole or in part or reject them on the basis of valid reasons.

Levine referred to the 2013 U.S. Supreme Court ruling that upheld the EPA's right not to require NPDES permits for logging roads ((Decker v. Nw. Env'tl. Def. Ctr., 133 S. Ct. 1326, 185 L. Ed. 2d 447, 76 ERC 1001 (2013)).

"We aren't asking that the EPA regulate stormwater discharges from forest roads under an NPDES permit," Levine said. "That issue has been addressed separately. The EPA needs to decide if not by NPDES permits then by some other scheme."

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The joint lawsuit filed by the Environmental Defense Center and the NRDC is available at [http://switchboard.nrdc.org/blogs/llevine/2014-12-18\\_Petition\\_for\\_Writ\\_of\\_Mandamus.new\\_cert.pdf](http://switchboard.nrdc.org/blogs/llevine/2014-12-18_Petition_for_Writ_of_Mandamus.new_cert.pdf).

The U.S. Court of Appeals for the Ninth Circuit ruling in *Envtl. Def. Ctr., Inc. v. EPA*, is available at [http://www.bloomberglaw.com/public/document/Envtl\\_Def\\_Ctr\\_Inc\\_v\\_EPA\\_344\\_F3d\\_832\\_57\\_ERC\\_1039\\_!](http://www.bloomberglaw.com/public/document/Envtl_Def_Ctr_Inc_v_EPA_344_F3d_832_57_ERC_1039_!)

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# U.S. green groups sue EPA over stormwater regulations

WASHINGTON | BY [AYESHA RASCOE](#)

The Administrator of the Environmental Protection Agency (EPA), Gina McCarthy, speaks at the Center for American Progress' 2014 Making Progress Policy Conference in Washington November 19, 2014.  
 REUTERS/GARY CAMERON

Two environmental groups have sued the U.S. Environmental Protection Agency for what the groups said was failing to comply with a court order requiring the agency to strengthen regulations preventing pollution from stormwater runoff.

The Natural Resources Defense Council (NRDC) and the Environmental Defense Center (EDC) said in a statement that they filed the suit on Thursday in the 9th U.S. Circuit Court of Appeals in San Francisco.

The groups said EPA has not obeyed a 2003 ruling from the 9th circuit in EDC v. EPA that required the agency to redo portions of its 1999 stormwater regulations dealing with urban runoff because they were not in line with the Clean Water Act.

The order also directed the agency to consider regulating runoff from unpaved forest roads.

NRDC and EDC said they have asked the court to impose a deadline for the EPA to act in these matters.

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In response to the lawsuit, EPA said it was working to strengthen its existing stormwater pollution program by requiring more environmental protections when renewing storm sewer permits and working with states and municipalities to reduce water pollution.

"The agency's goal is to build a broad nationwide constituency for better stormwater pollution control by educating communities and giving them an opportunity to develop strong programs before creating additional federal regulatory requirements," EPA said in a statement.

Rain water that runs off roads and other hard surfaces into sewer systems can contaminate water supplies, cause beach closings and harm aquatic life.

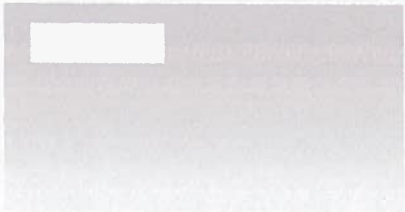
The environmental groups said EPA pledged it would revamp its urban stormwater rules in 2009, but backed off from those plans.

The agency has also said it would weigh whether to issue standards for forest road runoff, but no timeline has been set for a decision.

"We hope this suit spurs EPA to get back into the business of modernizing its whole stormwater program, which badly needs updating and could greatly benefit from new green technologies," said NRDC senior attorney Larry Levine in a statement.

(Editing by [Kevin Drawbaugh](#), Andrew Hay and Meredith Mazzilli)

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# Enviros Sue EPA Over Court-Ordered Stormwater Law Update

By Caroline Simson

Law360, New York (December 19, 2014, 6:25 PM ET) -- Two environmental groups on Thursday sued the U.S. [Environmental Protection Agency](#) in the Ninth Circuit, claiming that the agency has yet to comply with a 2003 decision rendered by the appeals court that mandated the agency strengthen its stormwater runoff rule.

The [Natural Resources Defense Council Inc.](#) and the Environmental Defense Center are arguing that the Ninth Circuit has ample authority to sign off on their petition for a writ of mandamus, given that the EPA has known about the order for more than a decade but has thus far failed to act. Because the agency hasn't yet issued the rule, it has insulated it from further scrutiny because the groups can't challenge the rule again until it has been reissued, the suit says.

The groups pointed to the fact that the delay has had an adverse impact on human health, since stormwater runoff is considered to be one of the most significant sources of water pollution in the nation, possibly to a greater extent even than contamination from industrial and sewage sources.

"This inexcusable delay in obeying a clear court order is, unfortunately, all too typical of EPA foot-dragging on the crucial stormwater pollution problem. The agency has repeatedly promised a much-needed update of all its stormwater protections, and repeatedly failed to come through," NRDC Senior Attorney Larry Levine said in a statement.

The Ninth Circuit's 2003 decision held that the rule in question, known as the "Phase II rule," created an impermissible self-regulatory system for small municipal stormwater systems because it allowed municipalities with populations less than 100,000 to decide which pollution control measures to include in their permits, without any oversight from the permitting agency.

Nor did the rule properly allow for public participation in the permitting process in those municipalities, as required by the Clean Water Act. In the decision, the court also concluded that the EPA hadn't adequately explained why the rule didn't address stormwater runoff from forest roads.

The decision vacated and remanded the urban stormwater portions of the rule, and directed the EPA to decide whether to regulate forest roads under the rule. Subsequent petitions for an en banc rehearing and a U.S. Supreme Court review of the decision were denied, the suit says.

Though the agency has recognized that it must comply with the order, more than a decade later it still has failed to do so, the suit says.

As a result, state permitting agencies continue to rely on the invalidated regulations, according to the suit.

The reason stormwater is so dangerous is that while flowing across pavement and soil it picks up contaminants that could include suspended metals, used motor oil, pesticides and trash, the suit says. Once in the sewer, the water is then discharged into streams — along with the contaminants it picked up along the way, exposing swimmers to the pollutants and resulting in hundreds of beach advisories and closings each year.

The groups are asking the court to issue a deadline for compliance to the EPA, and to immediately revise the regulations for small municipal stormwater systems so that permitting authorities are directed to comply with the 2003 order until the rule is updated. The suit also asks the court to order the EPA to propose a rule revising those regulations within six months.

In a statement released on Friday, the groups noted that in 2009 the EPA said it would undertake a major overhaul of its urban stormwater rules to obey the court order, but it never followed through.

Facing pressure from developers, the EPA never completed the new rules and recently disclosed that it was abandoning the effort, the groups said.

The NRDC is represented by in-house Jaclyn H. Prange and Michael E. Wall.

The Environmental Defense Center is represented by in-house counsel Margaret Morgan Hall and Brian P. Segee.

The case is Environmental Defense Center & Natural Resources Defense Council Inc. v. Environmental Protection Agency, case number 14-80184, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Stephen Berg.



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# **Attachment D**



LOCAL / L.A. Now

# Appeals court deals setback to L.A. County in storm-water case

By **Abby Sewell**

AUGUST 8, 2013, 3:04 PM

**T**he U.S. 9th Circuit Court of Appeals dealt a setback to Los Angeles County on Thursday in a long-running lawsuit over storm-water pollution.

The [Natural Resources Defense Council](#) and Santa Monica Baykeeper -- now Los Angeles Waterkeeper -- sued the county flood control district in 2008 over pollution in the Los Angeles and San Gabriel rivers, alleging that the flood control district had violated its storm water permit.

The lawsuit cited high pollution readings at monitoring stations in the rivers.

County officials have argued that the flood control district is not primarily to blame for the pollution in the rivers, because there are dozens of cities discharging polluted runoff upstream from the monitoring sites.

*Article continues below* ↓

Last year, the 9th Circuit ruled that the county was liable for pollution in the rivers, and referred to the water flowing from the "concrete channels" into the natural part of the lower river as discharges of pollutants.

The [U.S. Supreme Court](#) in January [reversed that opinion](#), saying that water flowing from one "concrete" section of the river to another section cannot be deemed a "discharge" of pollutants. It did not rule on a number of other issues raised in the case.

The 9th Circuit issued an opinion Thursday saying that the county is still liable for excessively high pollution levels detected at monitoring stations in county waterways.

The panel found that accepting the county's interpretation of the permit requirements would lead to "an unreasonable result."

"Under the County Defendants' reading of the Permit, individual Permittees could discharge an unlimited amount of pollutants ... but never be held liable for those discharges based on the

results of the emissions monitoring, even though that monitoring is explicitly intended to assess whether Permittees are in compliance" with discharge limitations, the opinion said.

Unless the county appeals, the case will go back to the federal district court to determine how the county will be required to fix the violations.

Kerjon Lee, a spokesman for the flood control district, said county officials are still reviewing the decision.

Steve Fleischli, senior attorney and director of NRDC's national water program, called the decision "a significant milestone."

"I think this case demonstrates that there is accountability built into the system, and if the county avoids that, they will be held liable," he said.

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US | Mon May 5, 2014 11:56pm EDT

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## Supreme Court denies petition to hear Los Angeles stormwater case

BY MICA ROSENBERG

The U.S. Supreme Court on Monday declined to review a ruling that found Los Angeles County liable for pollution runoff into Southern California rivers after big rain storms, in a decision hailed by environmentalists who brought the case.

The Natural Resources Defense Council, or NRDC, filed a lawsuit in 2008 arguing the county was responsible for contamination of billions of gallons of stormwater flowing into drains and then into the Los Angeles and San Gabriel rivers.

Rainwater mixes with a slurry of toxic chemicals and fecal bacteria from city streets. The suit alleged that pollution ending up in the rivers exceeded what was allowed by the county's permit, in violation of federal water quality laws.

Last August, the 9th U.S. Circuit Court of Appeals sided with the NRDC. By refusing to take up the case, the Supreme Court allowed that ruling to stand.

"This puts an end to questions of liability; the county has run out of appeals on whether it violated the Clean Water Act," said Steve Fleischli, a senior NRDC attorney. Now the case will return to the district court to determine how to remedy the violations, he said.

Los Angeles County has monitoring stations down river to test if levels of pollutants meet the standards of its National Pollutant Discharge Elimination System permit, which covers water runoff from more than 80 cities.

The flood control district manages a massive system of around 500 miles of open channel and 2,800 miles of storm drains.

The county has argued that it should not be held liable for violations of the permit because the data does not exactly show where the discharge is coming from and there are so many sources of water flowing into the system.

"This could force municipalities to redirect limited public funds from other critical services to spend on controlling pollution from private and other sources who are the responsible parties," Gail Farber, director of the Los Angeles County public works department, said in a statement.

The NRDC wants the county to build green infrastructure projects to help curb the runoff, like installing rain barrels or planting parks that collect or absorb the stormwater.

But it is not clear yet what remedy - if any - the district court will determine is needed in the

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case, said Howard Gest, who served as outside counsel for Los Angeles county.

He said the NRDC case is based on an outdated permit from 2001 that was updated in 2012. Under the new permit, the city is already building multi-use projects to deal with the stormwater, he said.

The county is likely to continue fighting the case which has made it to the Supreme Court before. In January 2013, the high court ruled in the county's favor on a very narrow question about what constitutes "discharge" of pollutants.

The case is Los Angeles County Flood Control District, et al. v. Natural Resources Defense Council, et al., Supreme Court of the United States, No. 13-901.

(Editing by [Ken Wills](#))

(This story corrects the name of the council to Natural from National in the second paragraph)

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Two suspects killed in Paris raid were planning suicide attack in La Defense, Paris financial district, prosecutor says.

# How clean is your favorite beach?

By A. Pawlowski, CNN  
June 29, 2011 12:37 p.m. EDT



Hampton Beach State Park in New Hampshire is a "superstar" when it comes to water quality. Other beaches didn't fare so well.

## STORY HIGHLIGHTS

Environmental group: Pollution continues to plague the country's beaches

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(CNN) -- Most beaches look idyllic at first glance, but as you head to the shore this summer, what's really lurking in the water you're bathing in?

Sharks and jellyfish aren't the only things to worry about, it turns out.

Pollution from storm water runoff and sewage overflows continue to plague the country's beaches, according to the 21st annual [beachwater quality report](#) released Wednesday by the Natural Resources Defense Council.

"With the Fourth of July fast approaching, Americans nationwide are breaking out their swimsuits, loading up their cars and heading to the beach," said David Beckman, water program director for the nonprofit environmental group.

"It's a summer rite of passage, but unfortunately it can also make you sick."

The report, which focuses on information from the previous vacation season, found that U.S. beaches saw the second-highest number of closing and advisory days in more than 20 years last year -- up 29% from 2009.

The council attributed the rise to oil washing up in the Gulf of Mexico from the [BP disaster](#), as well as heavy rainfall in Hawaii and contamination from unidentified sources in California.

In fact, more than a year after the BP spill, the effects linger. As of June 15, 2011, four beach segments in Louisiana that have been closed since the disaster have yet to open, and three beaches in Florida have remained under oil spill notice, the council said.

The report's main feature is a five-star rating guide to [200 of the nation's most popular beaches](#).

Stars were awarded if a beach rarely, if ever, violated the national

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- The "superstar" beaches are:
- Rehoboth Beach-Rehoboth Avenue Beach in Sussex County, Delaware
  - Dewey Beach in Sussex County, Delaware
  - Park Point Lafayette Community Club Beach in St. Louis County, Minnesota
  - Hampton Beach State Park in Rockingham County, New Hampshire
- On the other side of the spectrum, the council also named "the top 10 repeat offenders," or beaches that stand out as having persistent contamination problems. They include:
- Three sections of Avalon Beach in Los Angeles County, California
  - Cabrillo Beach Station in Los Angeles County, California
  - Two sections of Doheny State Beach in Orange County, California
  - Keaton Beach in Taylor County, Florida
  - North Point Marina North Beach in Lake County, Illinois
  - Beachwood Beach West in Ocean County, New Jersey
  - Villa Angela State Park in Cuyahoga County, Ohio
  - Ropes Park in Nueces County, Texas
  - Eichelman Beach in Kenosha County, Wisconsin
  - South Shore Beach in Milwaukee, Wisconsin

Nationally, the most common reason officials cited for closing beaches or issuing advisories last year was bacteria levels that exceeded quality standards, the council said. That indicates the presence of human or animal waste in the water.

It's a serious issue because polluted beachwater can cause stomach flu, skin rashes, pinkeye, respiratory infections, meningitis, and hepatitis, the report said.

Children are especially vulnerable, perhaps because they submerge their heads more often and are more likely to swallow water when swimming.

For more information about your favorite destination, check out the council's [guide to finding a clean beach](#).

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**THE WALL STREET JOURNAL.**  
WSJ.com

June 27, 2012, 4:45 PM ET

## Groups Warn of Disease Risks at Beaches and Lakes

By Laura Landro



Hannah Arista/DocuVita

As the summer swimming season gets into full swing, environmental groups and public-health agencies are warning of mounting disease risks at beaches and lakes due to storm-water runoff, sewage pollution and other forms of contamination.

The nonprofit Natural Resources Defense Council Wednesday released its [annual beach-water-quality report](#) showing that U.S. beaches last year had the third-highest number of closing and advisory days in more than two decades. The list includes 15 “repeat offenders” that have had persistent contamination issues over the last five years in California, Illinois, Louisiana, New Jersey and New York.

Earlier this month the federal Environmental Protection Agency [issued a report on the 2011 swimming season](#) at 3,650 monitored beaches. The agency found the percentage of beaches with one or more notifications of a potential risk to public health rose to 43% last year from 37% in 2010 and 33% in 2007. One reason was heavier-than-usual rainfall-based advisories in Hawaii, New York and Connecticut.

According to the Centers for Disease Control and Prevention, there has been a substantial increase in recent years in the number of recreational water illnesses and infections. Germs are picked up by swallowing, breathing in mists or aerosols or having skin or wounds in contact with contaminated waters, including swimming pools where poor human hygiene spreads illness.

The EPA estimates that up to 3.5 million people in the U.S. become ill from contact with raw sewage from sewer overflows each year. That number could actually be higher because people who get sick from swimming in polluted waters aren’t always aware of the cause of their illness and don’t report it to local health officials.



Besides adding to health costs, beach closings due to contamination can hurt local economies. One study estimated economic losses as a result of closing a Lake Michigan beach due to pollution could be as high as \$37,030 a day.

In October, the EPA is due to publish new or revised recreational-water-quality criteria to replace standards dating back to 1986.

The NRDC says the draft recommendations the EPA published in December don't go far enough to protect the public, saying they would still permit 1 in 28 swimmers to become ill.

NRDC senior attorney Jon Devine says the EPA needs to "reform and rigorously enforce national requirements to ensure runoff is controlled" using innovative "green" solutions such as roadside plantings and porous pavements to help store and evaporate runoff. Polluted runoff from storm water is the biggest known source of contamination.

The EPA says it is updating recommendations based on comments it received. But the agency takes issue with the NRDC's position, saying that when properly implemented the recommendations would protect more than 99% of swimmers from gastrointestinal illnesses over a swimming season. The agency says it is also helping communities build and properly operate sewage plants, working to control overflows to reduce them as much as possible, and working with the U.S. Coast Guard to reduce discharges from boats and ships.

The NRDC and EPA use data from state, county and local governments for their annual reports. But the data lag by a year. For more current information, many communities issue their own weekly or monthly reports on conditions at beaches. That allows swimmers to make their own judgments as to whether it is safe to swim, says Angelo Bellomo, director of Environmental Health in the Los Angeles County Dept. of Public Health.

Mr. Bellomo says the county is working with another nonprofit group, Heal the Bay, which also reports on water quality. The county is also working with the town of Avalon — whose beaches on Catalina Island are one of the top repeat offenders in the NRDC report — to determine what the causes of its polluted beaches are, including sewage, and how best to respond.

Mr. Bellomo says the NRDC and EPA annual reports are important to help tackle the broader issue of persistent pollution, and decide what investments to make to bring down contamination levels. "There is a very good argument to be made that this can be better controlled," he says.

One bright spot: Heal the Bay's own annual Beach Report Card, which graded beaches from A to F, gives 93% of the state's 441 beaches an A or B grade largely due to improvements in L.A. County.

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# **Attachment H**

# Beach bound? Read this before you go near the water

DISPATCHES [WWW.USATODAY.COM/BLOG/DISPATCHES/](http://WWW.USATODAY.COM/BLOG/DISPATCHES/)

Jayne Clark, USA TODAY

1:10 p.m. EDT June 26, 2013



San Clemente State Beach in Orange County, Calif., is one of 13 five-star rated beaches by the Natural Resources Defense Council. (Photo: Hannah Arista Photography)

The good news about the annual [Beach Report \(http://www.nrdc.org/water/oceans/ttw/default.asp\)](http://www.nrdc.org/water/oceans/ttw/default.asp) from the [Natural Resources Defense Council \(http://www.nrdc.org/\)](http://www.nrdc.org/): The water quality of the nation's most popular beaches hasn't degraded since last year.

The bad news: It hasn't improved much, either.

In its 23rd annual report, out today, the NRDC says high bacteria levels in the water caused beach closings or advisories on a cumulative 20,000-plus days in 2012. The results are detailed in [Testing the Waters: A Guide to Water Quality at Vacation Beaches \(http://www.nrdc.org/water/oceans/ttw/default.asp\)](http://www.nrdc.org/water/oceans/ttw/default.asp), which examines EPA test results at 3,000 beaches.

For the second year, NRDC has a [searchable by zip code map \(http://www.nrdc.org/beaches\)](http://www.nrdc.org/beaches) that enables beach-bound vacationers to check recent water-quality information.

"Pollution levels have remained constant and we're still seeing the same unacceptable level of closings and advisories every year," NRDC senior attorney Jon Devine told USA TODAY.

The primary cause of beach water pollution is storm runoff from roadways, parking lots and other hardscapes, Devine noted, adding the NRDC wants the EPA to enact stricter rules on how cities manage that runoff.

Swimming in contaminated water can cause a host of maladies from gastrointestinal ailments to pinkeye, though linking an illness to a day at the beach is "extremely under reported," Devine said. "People don't know that water can contain viruses, bacteria and other parasites that make you sick. And when they get sick they don't associate the two."

Overall, the [Great Lakes region](#) had the highest violation rates, with 10% of the water samples not meeting clean-water standards. The best scores were from the Delmarva area with 3% of samples in violation.

States with the highest violation rates: Ohio (21%); Wisconsin (14%) and Minnesota (12%). States with the fewest violations: Delaware (less than 1%); New Hampshire (1%); and North Carolina (2%).

NRDC awards up to five stars to 200 popular vacation beaches based on low violation rates,

frequent water testing and prompt public notification when there is a problem.

The five-star winners:

- Alabama: Gulf Shores Public Beach in Baldwin County
- Alabama: Gulf State Park Pavilion in Baldwin County
- California: Bolsa Chica Beach in Orange County
- California: Newport Beach in Orange County (2 of 3 monitored sections)
- California: San Clemente State Beach in Orange County
- Delaware: Dewey Beach - Dagsworthy in Sussex County
- Delaware: Rehoboth Beach in Sussex County
- Maryland: Ocean City at Beach 6 in Worcester County
- Michigan: Bay City State Recreation Area in Bay County
- Minnesota: Park Point Franklin Park / 13th Street South Beach Park Point in St. Louis County
- Minnesota: Lafayette Community Club Beach in St. Louis County
- New Hampshire: Hampton Beach State Park in Rockingham County
- New Hampshire: Wallis Sands Beach in Rockingham County

The 11 repeat offenders — beaches where water samples exceeded public health standards more than 25% of the time from 2008-2012:

- California: Avalon Beach in Los Angeles County (*4 of 5 monitored sections*)
- California: Doheny State Beach in Orange County (*6 of 7 monitored sections*)
- California: Poche County Beach in Orange County
- Indiana: Jeorse Park Beach in Lake County
- New Jersey: Beachwood Beach in Ocean County
- New York: Ontario Beach in Monroe County
- Ohio: Lakeshore Park in Ashtabula County
- Ohio: Euclid State Park in Cuyahoga County
- Ohio: Villa Angela State Park in Cuyahoga County
- Ohio: Edson Creek in Erie County
- Wisconsin: South Shore Beach in Milwaukee County

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# **Attachment I**



# MINNPOST

## 'Green infrastructure' – a toolbox for reducing runoff and beautifying American cityscapes, too

By **Ron Meador** | 11/21/11



Photo by Bill Kelley

A scene from Target Center's green roof

An interesting new report arrived by e-mail last week, describing how cities across America are using "green infrastructure" in ambitious ways to reduce the flow of polluted runoff into lakes and rivers.

According to "Rooftops to Rivers II," prepared by the Natural Resources Defense Council:

- Chicago has become a national leader in the "green roof" movement, planting runoff-reducing vegetation on some 500 roofs totaling nearly 5.5 million square feet, and has created more than 13,000 "green alleys" through plantings, grading changes and repaving with permeable materials. Most of the projects were accomplished through voluntary incentives and without a dedicated source of funding assistance.
- Syracuse has become the first city in the United States to mandate green infrastructure improvements as a way of reducing sewage runoff, albeit under a consent decree resulting from its pollution of Onondaga Lake in upstate New York. Using sewer fees, grants and low-interest loans, the city plans to spend \$80 million over the next decade on a "Save the Rain" program utilizing green roofs, rain barrels and permeable paving as well as such "gray" infrastructure retrofits as sewer separation and runoff retention structures.
- Philadelphia, not always viewed as a model of environmental progressivism, tops the NRDC's

list of cities doing the most to improve water quality with green infrastructure. Indeed, it was the only city to score in all of the categories cited as keys to reducing runoff through green techniques: having a long-term plan and requirements for use of green infrastructure, setting effective rules for storm water retention, providing guidance and incentives to property owners as a way of stimulating private action, and ensuring a long-term, dedicated funding source to support infrastructure investment.



Eleven other cities ranging in size from Aurora, Ill., to New York City round out the reports list of exemplary efforts, all of which had the benefit of making urban landscapes more beautiful as well as less polluting.

No Minnesota city made the list, although Minneapolis was among a half-dozen cities mentioned for "doing interesting, innovative projects that warrant recognition."

And I find no sign that any Minnesota media mentioned the report, which is kind of unfortunate, because the challenges and opportunities it discusses are the same ones shaping the future of water quality and pollution control across our state.

### **A regulatory agenda**

As you might expect, NRDC's report comes with an agenda attached: to greatly reduce the "estimated 10 trillion gallons a year of untreated stormwater [that] runs off roofs, roads, parking lots, and other paved surfaces, often through the sewage systems, into rivers and waterways that serve as drinking water supplies and flow to our beaches, increasing health risks, degrading ecosystems, and damaging tourist economies."

More specifically, the organization is looking ahead to the U.S. Environmental Protection Agency's pending review and revision of national regulations on stormwater runoff. In that revision, NRDC says, the EPA must

*reform the national Clean Water Act rules that apply to stormwater sources to require retention of a sufficient amount of stormwater through infiltration, evapotranspiration, and rainwater harvesting to ensure water quality protection. The rules should apply throughout urban and urbanizing areas. The EPA should also require retrofits in already*



*developed areas and as part of infrastructure reconstruction projects. In so doing, the EPA will embody the lessons learned from cities across this country and the leaders who understand that, from an environmental, public health, and economic perspective, green infrastructure is the best approach to cleaning up our waters.*

Whether such an overhaul is feasible in the current anti-regulation, anti-EPA weather system dominating the nation's political climate these days is open to debate, I guess. But the interesting thing about the case studies in this report is how much can be accomplished even under the old rules -- as long as local leadership is willing to take on the task, and citizens are willing to give their support.

#### **Four Minnesota case studies**

The problems of controlling runoff were at the heart of an interesting conversation earlier this month in St. Cloud, where 100 or so people who work in some way on water issues gathered for a policy forum with the hopeful heading, "**Working Together to Achieve Healthy Waters.**"

The convenor was Environmental Initiative, whose mission is to encourage problem-solving collaboration among government agencies, businesses, advocacy groups and other nonprofits with stakes in environmental issues. (Until a recent name change, it had been known for nearly 20 years as the Minnesota Environmental Initiative, or MEI.)

The NRDC report hadn't come out yet, so it wasn't part of the conversation. But green infrastructure, in both urban and rural forms, was a theme running strongly through the four case-study presentations that formed the heart of the program:

- Dennis Fuchs, administrator of the Stearns County Soil and Water Conservation District, on **educating and assisting livestock operations to control runoff.**
- Mary Blickenderfer, an educator with the University of Minnesota Extension Service, on **engaging lakeshore landowners to create runoff buffers** where their lawns meet the lake.
- Patrick Shea, St. Cloud's public services director, on a range of things his city is doing to **reduce runoff into the Mississippi River.**
- Shawn Tracy, a landscape ecologist with Metro Conservation Districts, on new mapping tools that can help cities and suburbs **identify the highest-benefit retrofit projects** for stormwater control.

#### **Preventing bad vs. creating good**

After the presentations, the discussion turned to how the successes of these rather small efforts could be scaled up for wider application, as funding from the Legacy Amendment enables Minnesota to begin a new era of raising water quality statewide.

And one observation kept coming back to me as I read the NRDC report. It was from John Jaschke, executive director of the Minnesota Board of Soil and Water Resources, who said something very much like this:

We've learned from experience that regulation is a good tool for stopping a bad situation from getting worse, by forcing people to give up their old/bad ways. But it isn't such a good tool for making things better, because that requires persuading people to adopt new/better ways.

The most stirring aspect of "Rooftops to Rivers" is how much better these example cities have become — in ways that go far beyond simply reducing runoff — through creation of beautiful streetscapes, rooftop oases, public gardens, greenbelts and more.

A close runner-up is the intriguing variety of tools and strategies that produced these results. Regulation is always present in some role, to be sure. But not always, and not necessarily, in the lead.

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SUBMITTED BY PHILIPP MUESSIG ON NOVEMBER 21, 2011 - 12:13PM.

Regulatory and non-regulatory push/pull measures can work nicely together and are both needed. The MN GreenStep Cities program is a voluntary challenge, assistance and recognition program to help cities achieve their sustainability goals through implementation of 28 best practices. Launched last year by a public-private partnership, we feel it has potential to inspire beyond-compliance, cost-saving innovation, which must become the 'new normal.'

SUBMITTED BY JOSH WILLIAMS ON NOVEMBER 21, 2011 - 2:58PM.

Great article, thanks, Ron.

In addition to the other examples from around Minnesota, the City of Saint Paul is preparing to break new ground in the arena of green infrastructure. Funded as part of the HUD/EPA/Federal DOT 'Sustainable Communities' grant to the Twin Cities region (via Met Council), Saint Paul is set to begin development of a green infrastructure/stormwater plan for redevelopment in the Central Corridor.

The plan--being developed in cooperation with the Capitol Region Watershed District, the City of Minneapolis, the Mississippi Watershed Management Organization Organization and with input from the U of M--will develop new, cooperative frameworks for financing the construction and maintenance of these facilities as well as for their regulation and permitting.

Within this new framework, the project will develop plans for multiple district/neighborhood-level green infrastructure installations for stormwater treatment. These installations will be designed to offer other benefits as well, including providing open and green space where it is much needed, and potentially areas for active recreation. The project will also set standards for development of such systems elsewhere in the Central Corridor and along other transit corridors in the Twin Cities and elsewhere.

This exciting project has the potential to help bring about a new paradigm in stormwater management--one which center around cross-jurisdictional cooperation to achieve better, more sustainable urban development and which views stormwater as a resource rather than a waste product.

While the project is an ambitious one, the potential for improving the health and livability of our communities, and for improving the state of our surface and groundwater resources is an opportunity we cannot let pass.

Josh Williams, Planner,  
City of Saint Paul



# **Attachment J**

<http://www.greenbiz.com/blog/2012/02/03/major-dividends-cities-reap-investing-green-infrastructure>

# The Major Dividends Cities Reap from Investing in Green Infrastructure

[Larry Levine](#)

Friday, February 3, 2012 - 3:31am

Today NRDC released a new [report](#) on how local and state governments can stimulate potentially *billions* of dollars of private investment, to offset the costs of repairing our nation's broken stormwater infrastructure. It's worth a read for policymakers, investors, and anyone who receives a wastewater or stormwater bill from a local utility. In other words, anyone concerned with how municipalities and wastewater utilities will pay for much-needed water infrastructure investments.

Stormwater and sewage overflows are leading sources of water pollution that we must address to meet the Clean Water Act's goals -- first [enacted](#) forty years ago -- of fishable, swimmable, drinkable waters [nationwide](#). And the overdue bill for our disinvestment in municipal water infrastructure over the last two decades totals in the hundreds of billions of dollars.



As NRDC detailed last November in [Rooftops to Rivers II](#), cities across the country are using [green infrastructure](#) -- like green roofs, street trees, and porous pavement that soak up urban runoff -- to tackle these problems. These smarter water solutions work to clean up local waterways while creating healthier cities. *Rooftops* includes case studies of more than a dozen cities and spotlights [Philadelphia](#), in particular, for leading the way, with a [groundbreaking](#) 25-year plan to deploy the most comprehensive network of green infrastructure found in any U.S. city.

Now, on the financing front, Philadelphia has a huge opportunity to lead the nation in applying innovative ways to fund these green infrastructure solutions. Many other cities, facing similar challenges, could be primed to do the same.

Our new [report](#), titled "Financing Stormwater Retrofits in Philadelphia and Beyond," uses the City of Brotherly Love as a test case to explore how innovative financing mechanisms, currently being used for energy efficiency retrofits, can be adapted to the stormwater management context.

The key is that Philadelphia, like many communities around the country, has a stormwater utility fee structure that calculates charges based on a parcel's impervious area and provides "credit" -- literally, up to a nearly 100% reduction in the fee -- for property owners who retrofit to reduce runoff into city sewers, using green infrastructure and related techniques.

Over the next 25 years, Philadelphia expects to spend at least \$1.67 billion on public stormwater retrofit projects, toward meeting its legal obligation to capture the first inch of runoff from 10,000 acres of impervious surfaces. To meet that 25-year target, the city is also counting on thousands of acres of private, market-driven redevelopment projects, which must meet a new stormwater performance standard for new construction. But what's been missing from the city's approach, so far, has been an effective way to promote widespread investment in retrofits of *existing* developed sites -- properties where there is no plan for redevelopment in the foreseeable future, which comprise most of the built environment.

The incentives created by the city's stormwater fee and credit system provide a vital hook for stimulating these much-needed retrofits. But without access to private financing, most property owners will be unable to afford the upfront investment needed to take advantage of the stormwater retrofit credit. And that financing is not easy to come by in the traditional commercial lending market.

Our new report explains how innovative financing mechanisms already being used to underwrite the capital costs of retrofitting buildings to be more energy-efficient -- when combined with a stormwater fee and credit system -- can draw hundreds of millions in private investment to a city like Philadelphia. My NRDC colleague (and the report's lead author), Alisa Valderrama, has more on that in her latest blog post [here](#).

As we explain in the report, many hundreds of U.S. cities have stormwater fees and credits based on the same general principles as Philadelphia's. Likewise, over 800 cities have similar regulatory obligation to reduce stormwater pollution and/or sewage overflows caused by excessive runoff. (That's to say nothing of all of the cities facing [flooding](#) problems, which, like stormwater pollution, are expected [increase](#) in much of the country due to climate change.) For example:

- [Washington, DC](#): Washington, DC has implemented not one but two impervious area-based stormwater fees: one goes to the regional sewer authority, DC Water, to defray the costs of reducing sewage overflows, while the other goes to the city's Department of the Environment, to fund runoff pollution prevention in the area served by city-owned separate storm sewers. The city is currently developing a fee rebate program that will apply to both fees, for customers who install approved stormwater retention practices.
- [New York City](#): NYC has pending a draft agreement with the state that would set initial citywide targets for stormwater retrofits over the next 20 years. Like Philadelphia, the city plans to meet its targets with over \$1 billion of public investment in green infrastructure plus new performance standards for redevelopment projects, but currently lacks a strategy to stimulate widespread retrofits of existing development. The city has [explored](#) a restructuring of its water and sewer fees, to provide a credit to owners who install stormwater retrofits. So far, the city has adopted a very limited [pilot](#) fee and credit

program, applicable only to stand-alone parking lots. An expanded program remains under consideration.

- [Cleveland](#): The North East Ohio Regional Sewer District has a specific federal mandate to implement green infrastructure to help meet Clean Water Act requirements to reduce sewage overflows. In 2010, the District approved a plan to assess a stormwater fee based on the amount of a property's impervious surfaces. Property owners will be eligible for a fee reduction -- up to 100 percent for both residential and commercial owners.
- Others: An appendix in today's report summarizes fee and credit systems in two other major cities (Kansas City and Portland). These and others are also featured in [Rooftops to Rivers II](#).

NRDC is working now with Philadelphia to pilot some of the financing approaches explored in the paper. Water Commissioner Howard Neukrug recently told me that the Philadelphia Water Department's goal is to "enable property owners to obtain stormwater credits on their bills while also contributing to the city's green acre inventory. By working with customers who can manage stormwater from many acres of hard surfaces – and ideally public runoff from streets – we can transform pockets of our combined sewer areas into green acres in a cost-effective way. This is the best example of a public/private partnership."

In Philadelphia alone, we estimate a potential for \$376 million in private investment, if innovative finance approaches are applied to harness the power of the market. Multiplied by hundreds of cities nationwide, and that means a LOT of business opportunity.

And, most importantly, every private dollar invested in green infrastructure is a dollar that cities like Philadelphia will not have to spend, on the public ledger, to meet clean water goals.

That's what anyone would call a win-win-win. Good for business, good for the environment, good for taxpayers.

And we all get not only clean water but healthier, greener communities to show for it.

What mayor wouldn't love that?

*This article originally appeared [on the NRDC's Switchboard blog](#).*

[Chicago River photo](#) via Shutterstock.

**SWITCHBOARD**  
NRDC's Staff Blog



# **Attachment K**



## Some Winnetka residents oppose stormwater plan

October 08, 2013 | Karen Ann Cullotta, Chicago Tribune reporter

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A growing contingent of Winnetka residents opposed to the village's \$61 million stormwater management project are determined to put a halt to a proposal that has ignited the fury of local [homeowners](#) groups and environmentalists.

Other residents are just plain angry with what they view as local officials' disregard for the democratic process.

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"This is classic Cook County politics and Winnetka's version of Meigs Field — do it now, and explain later," said resident Marc Hecht, referring to Mayor Richard Daley's 2003 closure of the Chicago air field.

Hecht said Winnetka officials have disregarded residents' concerns about the project, holding two town hall meetings only after the proposal had already gotten preliminary approval from the village board.


"They want to build a tunnel and dump untreated stormwater in Lake Michigan in 2013, which is absolutely




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Residents come out to support stormwater plan in Winnetka (/2013-07-08/news/ct-tl-ns-0711-winnetka-northwest-project-20130708\_1\_detention-pond-stormwater-plan-village-council)  
July 8, 2013


Winnetka residents question stormwater project plans (/2013-09-26/news/ct-tl-ns-0926-winnetka-stormwater-meeting-20130926\_1\_winnetka-residents-village-manager-robert-bahan-stormwater)  
September 26, 2013

crazy," Hecht said, referring to the largest and perhaps most controversial portion of the project, the \$34.4 million Willow [Road](#)  Stormwater Tunnel.


About 50 homeowners from the village's Forestview and Boal Parkway neighborhoods said they have grave concerns about the project's proposal to reroute a significant amount of rainwater from Northwest Winnetka to the [Forest](#)  Preserve Pond and an adjacent creek south of Tower Road and east of Forest Way.

In a written statement from Forestview and Boal Parkway homeowners, residents said that during "major rain events, the pond and adjacent creek are not only completely full, but breach their banks and run toward adjacent houses." The statement added, "diverting stormwater to the pond would simply alleviate flooding from one neighborhood and create it in another."


Resident James Haft, an officer in the Forestview Homeowners Association, recently told the village council that diverting "toxic runoff" into the already overburdened pond would not only lead to flooding for neighborhood homes, but would be devastating to the area's native vegetation and wildlife.

"It would be a great loss to a habitat that is [home](#)  to blue herons, eagles, hawks, owls and red foxes," Haft said. "You would be putting this wonderful, sensitive environmental resource at risk."

Richard Footlik said after a 2008 storm that flooded many village neighborhoods isolated the Tower Road home of his mother, Sylvia Footlik, resorted to running eight pumps and treating her basement as if it were "the bilge of a sinking ship."

"There are false assumptions behind major portions of your project," said Footlik, an [engineer](#) , who also expressed his concerns to officials at the meeting.

Like many Winnetka residents who are worried about the project's impact on the environment, Debbie Ross said she is shocked by what she views as the village's decision to push a proposal forward that lacks any semblance of green infrastructure best practices.

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"There is another way to do stormwater management than dumping it in Lake Michigan," said Ross, citing the 2011 Natural Resources Defense Council report, "From Rooftops to Rivers II," which provides case studies for 14 geographically

Trustees support flood plan (/2013-05-28/news/ct-tl-ns-0530-winnetka-stormwater-20130528\_1\_village-trustee-village-president-gene-greable-chris-rintz)  
*May 28, 2013*



Consultant says Winnetka would have had little flooding if... (/2013-04-23/news/ct-tl-ns-0425-winnetka-stormwater-20130424\_1\_stormwater-plan-winnetka-stormwater-projects)  
*April 23, 2013*


Winnetka officials approve stormwater utility fee (/2014-03-07/news/ct-winnetka-stormwater-fee-tl-0313-20140307\_1\_stormwater-utility-fee-winnetka-officials-village)  
*March 7, 2014*


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diverse cities across the U.S.. They include Philadelphia, Milwaukee and Chicago — all of which are considered leaders in using environmentally friendly infrastructure solutions to address stormwater problems.

"The public needs to understand the importance of this," said Ross. "And to know that it's not just about your house  flooding, but it affects the entire village. This project could make Lake Michigan not viable ... and that's the water that we drink .

Winnetka Village President Gene Greable has responded to the concerns with a written statement about the funding of the project with a \$34.5 million bond sale  — which, due to the village's home rule status, can take place without a voter referendum.

"As all of you know, Winnetka is a Home Rule Community," Greable said. "As a result, the Village Council is not required to and should not submit the Village's Flood Control program, or its financing, to the voters for their approval in a referendum. The Trustees have the full power and authority to adopt the Stormwater Management Program which we have described to you and to finance  it by issuing the necessary amount of long-term debt.

"If there were to be a referendum, it would therefore only be an advisory referendum, not binding on the Council," he added.

Trustee Arthur Braun reminded opponents to the stormwater management project that village engineer Steve Saunders and consultants hired by the village council did an enormous amount of work prior to unveiling details of the plan to residents.

"We want you to know we listen to your concerns and we encourage the community to come to us, as we need your feedback," Braun said. "We ask if you have information, not opinions, please bring it forth. If you have facts, we really would like to see them, because this path was not decided on a lark."

***[kcullotta@tribune.com](mailto:kcullotta@tribune.com)*** (mailto:kcullotta@tribune.com)

## RiverPark Community

[liveriverpark.com](http://liveriverpark.com)

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# **Attachment L**

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Drought boosts interest in stormwater capture and reuse in LA

Molly Peterson

February 28 2014

Caption

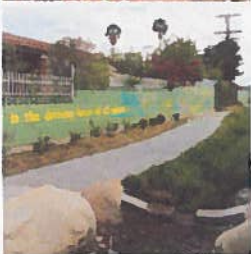
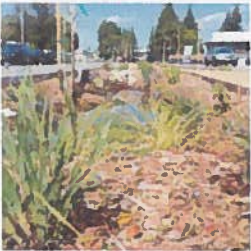
Woodman Avenue's median retrofit captures stormwater from 120 square acres of surrounding Los Angeles.

Molly Peterson/KPCC

Slideshow



1 of 3











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A week after it was proposed, a nearly \$700 million package of drought relief measures passed the state legislature Thursday and is on its way to Gov. Jerry Brown. A huge chunk of the money in the bill is earmarked for new projects to capture and store water from storms like those hitting California now.

So it's worth pointing out what Southern California has done and has yet to do when it comes to managing stormwater.

Regional stormwater systems must meet certain federal Clean Water Act standards to operate. "Both permits create extremely strong opportunities to encourage stormwater capture to increase water supplies," says Noah Garrison, a lawyer with the Natural Resources Defense Council.

"Urban pollution flows to storm drains and then is dumped into local waterways, tainting rivers and beaches with metals, nutrients, ammonia, bacteria, toxins, and pesticides," writes Garrison, [in a report entitled Rooftops to Rivers](#).

In the greater L.A. region, these rules require "new development and significant redevelopment, and in some circumstances existing development, to use green infrastructure practices" to control rainstorms of three-quarters of an inch or more.

The City of Los Angeles has also developed its own ordinance promoting stormwater capture. In recent years, L.A. City Public Works, the L.A. Department of Water and Power, and the county flood control district and other local agencies have worked together to demonstrate how retrofitting concrete-and-asphalt city landscapes can save and clean up water.

In Panorama City, [The River Project](#)'s Melanie Winter admires the way the storm has filled swales dug into a formerly-concrete Woodman Avenue median. The River Project, the Department of Water and Power, and the L.A. Department of Public Work Bureau of Sanitation developed the project as part of a watershed plan for the Tujunga-Pacoima area.

Along the swales, a dirt walking path is framed with 27,000 square-feet of native and drought tolerant landscape and 99 new street trees. This is storm water capture in action.

"There's 120 acres of this adjacent neighborhood that drains to this median. It would have otherwise gone to gutters and storm drains along the way."

Water that otherwise would have been polluted runoff now stays here, replenishing the local groundwater. It nurtures trees and vegetation that act as lungs for the city and offer food to animals and bees that spread pollen. People have started using the new path as a running trail. Where concrete median compounded the urban heat island effect, the dirt path reduces it.



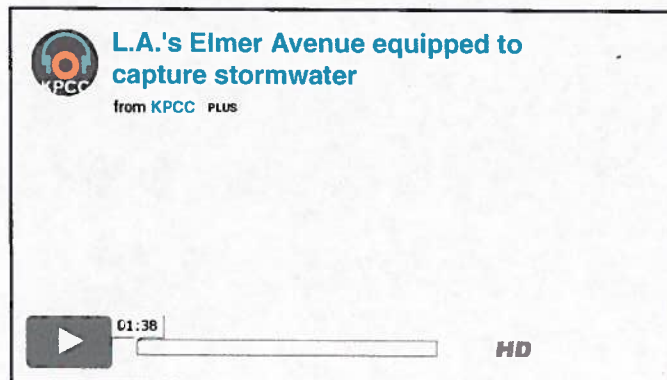
Winter says this kind of low-impact development makes the city healthier. She calls it urban acupuncture.

“Urban acupuncture is little strategic interventions that in aggregate can make a massive difference here in los angeles.”

Another needle in the chi of Los Angeles is not far away in Sun Valley. [The Elmer Avenue Green Street absorbs](#) runoff from 37 acres of foothills, as it flows through a catch basin into infiltration galleries dug under the street itself.

[Council for Watershed Health](#) Senior Scientist Kristie Morris regularly tests water quality in the system. Thursday she was there to get a base line to compare with samples after this weekend’s storm.

“We’ve got a 4-inch storm apparently moving through, through Sunday so we hope to quantify the amount of water we’re capturing from that and look at the water quality benefits as well,” she says. Elmer Avenue captured 59 acre-feet of water in a recent year, she said – that’s equivalent to the amount of water 2 to 3 average households use a year.



These projects are [among dozens of similar efforts around L.A.](#) According to the LA Department of Public Works Bureau of Sanitation, together they can capture at least 20-thousand acre feet of water a year. You could fill a Rose Bowl 77 times with that.

It’s unclear what money the city will get from the drought relief package to create more projects like these. But Adel Hagekhalil, with the Bureau of Sanitation can name a few places he’d like it to go.

At the top of the list is a 46-acre gravel pit in Sun Valley that he sees being transformed into a wetland park. [The Strathern Wetlands Park](#) is a collaboration between the Los Angeles County Flood Control District, the City of Los Angeles, and the Sun Valley Stakeholders Group.

“I think we’ve done some great things for limited funding, there’s more that can be done,” he says.

Hagekhalil says the new drought legislation is a good signal from Sacramento that protecting and enhancing local water supplies is important.

“I’m glad that there’s a lot of heightened recognition about the challenges we’re facing,” he says. “Challenges bring opportunity.”

Hagekhalil says rain, too, is an opportunity – and he’s glad L.A.’s stormwater capture projects are actually seeing runoff to capture during this relatively dry season.

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